FILED
MAY 10 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

82 6705

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1982

ROLF BETKA, Appellant

vs.

GLEN R. SMITH, and DORIS SMITH, Appellees

APPEAL FROM THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

ROLF BETKA, IN PRO PER
19886 S. White Cloud Circle
West Linn, Ore. 97068

RECEIVED
MAY 10 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82 6705

ROLF BETKA, Petitioner

vs.

GLEN R. SMITH, and DORIS SMITH, et al.,
Respondents

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPARIS

Rolf Betka respectfully moves the court for leave to proceed herein in forma pauperis, in accordance with the provisions of Title 28 USC, Sec 1915, and Rule 46 of the rules of this court. The affidavit of Rolf Betka in support of this Motion is hereto attached.

Presented herewith is the jurisdictional statement of the moving party.

DATED: MAY 9, 1983

Respectfully submitted:

ROLF BETKA, In Pro Per
19886 S. White Cloud Circle
West Linn, Ore. 97068
Telephone: (503 657-3669

RECEIVED
MAY 10 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82 6705

ROLF BETKA, Petitioner,

vs.

GLEN R. SMITH, and DORIS SMITH, et al.,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

STATE OF OREGON)
) ss.:
County of Clackamas)

I, Rolf Betka, beeing first duly sworn, depose and say that I am the petitioner and defendant-appellant in the above entitled case; that in support of my motion to proceed on appeal without beeing required to prepay fees, costs, or give security therefor, I state that because of my poverty I cannot pay or give security for the costs and still be able to provide myself with the necessaties of life. I have not asked for leave to proceed in forma pauperis in the lower courts and was not denied such leave.

Rolf Betka

ROLF BETKA, In Pro Per
19886 S. White Cloud Circle
West Linn, Ore. 97068
Telephone (503) 657-3669

Subscribed and sworn before me this 9th day of May, 1983.

NOTARY PUBLIC FOR OREGON: Mary A Cameron
My Commission expires: 4-19-86

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1-4
GROUNDS OF JURISDICTION OF SUPREME COURT	7 & 7a, 7b
QUESTIONS PRESENTED	5, 6
STATEMENT OF THE CASE	8-11
SUBSTANTIALITY OF FEDERAL QUESTIONS	12,13
ABUSE OF DISCRETION	14
CONCLUSION	14
APPENDICES:	17& 17a
A. OPINION OF DISTRICT COURT	B
B. JUDGMENT, DECREE, OR ORDER OF DISTR. & APP. COURT	A,C, L-N
C. NOTICES OF APPEAL TO SUPREME COURT OF THE UNITED STATES (INCL 2 AMENDMENTS)	I, J,K

INDEX OF AUTHORITIES

Cases:		15
Statutes:) Authorities:)		16
Other Authorites:	Statements on Constitutionalities of Acts of Congr. and Statues	16 & 16a

JURISDICTIONAL STATEMENT

Pursuant to Rules 12, 13 and 15 of the Rules of the Supreme Court of the United States, appellant, Rolf Betka, files this statement on the basis upon which it is contented that the Supreme Court of the United States has jurisdiction to review the orders entered by the United States Court of Appeal for the Ninth Circuit in this case and should exercise such jurisdiction herein.

OPINIONS BELOW

The order by the U.S. Magistrate in the Distr. Court, dtd Sept 18, 1981 did not rule on the jurisdictional allegetions made by defendant appellant authorized by the Removal Act Title 28-1441 based on original federal question jurisdiction "arising under" as in Title 28-1331 and 28-1111 as stated in the Petition and Amendment and Supplement to Petition for Removal.

After having met the formal requirements for removal appellant relied on the text of Title 28-1447 (a,b) and expected that the Distr. Court would request the records of the State Court proceedings and would bring in A-T, an Oregon Corporation, a party defendant which had not joined in the removal for reasons as stated under "Questions Presented"(1) & Dailey v. Elicker & Ziegler v. Howard P. Foley Co.

With argument of lack of jurisdiction the Distr. Court with the same Order denied appellants Motion to dissolve a tem. injunction order granted plaintiff in the State Court proceedings.

Subsequently on Sept 28, Judge Frye of the Distr. Court denied appellants Motion to dismiss, in which, inter alia, appellant had alleged fraud.

And with the order of Oct 27, 1981 the same judge denied appellants Motion for holding opposing attorney in contempt and denied appellants Motion for reconsideration of the order by U.S. Magistrate to remand the case to the State court and denial of injunctive relief on the basis of lack of jurisdiction.

With date of Oct 28, 1981 appellant filed Notice of Appeal.

The Court of appeals dismissed the appeal with argument that they have no jurisdiction after denial of the allegation made under 28-1441 and example in brief for seperate and independent action allowing removal under 1441 and was intended to show that the trespass action by plaintiff against appellant was a disguised fed. claim for unlawfully seizing real property to which appellant had the right of possession under the laws of Oregon as adverse possessor which was known to plaintiff and A-T. The seizing was accomplished with the help of the Police Dept of the City of West Linn, The Sheriff of Clackamas County of Oregon and fraud and surrender of judicial power in the Circuit Court of Clackamas County of Oregon to a scheme to usurp the official power of the City of West Linn, Ore. for the purpose of rezoning the real property involved which had been suject to the same scheme in the past and had been defeated by homeowners including appellant when the land was under the previous jurisdiction of the county. The only homeowner left which would be affected by the zonethange is appellant.

The order to dismiss the appeal was of July 20, 1982 and included the denial of the Motion for injunctive relief which also had been filed in the Court of Appeals. As held in Davis v. Operation Amigo provisional remedy is available for the injunctive relief sought which came to the

Court of Appeals for review with the Order denying the Motion to dismiss for lack of jurisdiction and the order should have been remanded to the District Court for compliance with FRCP 52a.

Appellants motion for rehearing was denied with order of Feb 15, 1983 after application had been made in AC 82-3474 to join it with this action because both actions involve the same common question of law and fact and the defendants in 82-3474 are joint tortfeasors of the adverse parties in this action.

Appellant who had discovered the malice of involved "state actors" on May 4, 1981 saw himself forced to start the action against the tort feasors in Sept of 1981 when he discovered one day before filing the complaint that one of appellants car had been stolen and sold in violation of the National Motor Vehicle Theft Act, Title 18-2312 and 2313 involving the above "state actors" who had committed the act as part of the unlawful scheme to usurp the State Power as stated.

Because of the broad interpetation of fraud and fraud upon the court appellant filed Motion authorized under Fed. Rules of Civ. Proc. 60(b)(6) which was denied with order of April 15, 1983 by the Court of Appeal.

The order is also made subject of this appeal to this court.

According to Wright, Miller - Federal Procedure the 9th Cir. does hardly make any distingtion btween fraud and fraud upon the court.

In Distr. Court appellant had moved for Rehearing on 10-9-81 and had argued that causes "arising under" are properly removed.(CR 14 in AC)

With Motion under FRAP 10e appellant had demanded a correction of the certificate on appeal and had pointed to the transcript of Depositions obtained and received on 5-4-81 from which fraud and malice

can be seen. Certified copies, as stated in the motion for correction, had been submitted to the Distr. Court. Appellant had not received the order denying the rehearing.(Certified copies - of transcript of depositions) City of West Linn is a party to an agreement with A-T Industries, dtd Oct 10, 1960 which provides for the payment of $ 50,000.-- for sewers the laying of it for apartment houses contemplated to be erected on the property involved in this action would only be a reality if the zoning would be changed after the unlawful action of depriving defendant of ownership had been accomplished, with the help of plaintiff in an unlawful action in which the marketability of A-T's title as a superior title over that of appellant could not have been challanged.

According to the records of the Clackamas County Assessors Office the real property seized had been incorporated with appellants residential adjecent residential lot and was made part of the District Court Record of the case with Motion to Dismiss. The same instrument was used by ex-attorney of appellant without proper official stamp and was accepted by the court as evidence - contrary to law - in the temporary Injunction hearing of March 5, 1979 in which the property was given into the custody of the court, after an exparte restraining order had been issued without bond - contrary to Oregon rules - and hereby rendering it fatal.

According to the letter received from the County Surveyor with date of 3-7-83 maps and taxlotrecords were removed and defendant appellant alleges that it was done to conceal the date of the first taxpayment made by A-T for the property involved and the fact that the property had never been legally in possession of A-T.

QUESTIONS PRESENTED

(1)Whether the Court below improperly proceeded in the removal action using the same party description as used in the State Court.

Over the objection of appellant in the State Court A-T was named 3rd party defendant without having been served with process required by Oreg. Rule of Civ. Proc. Rule 22.

The Court of Appeals avoided the controversy by not including A-T at all in spite of having received the request from appellant that a determination as to the status of the parties is needed under fed. rules.

Since a 3rd party defendant is allowed to remove, and they did not join the removal the action could be remanded on this point alone.

The district court did not take up the issue. If they had and would have proceeded under the fed. rules the fraud would have been discovered and proof would have been available as held in Dailey v. Elicker including the additional fraud for demand of mesne profit by A-T in their crossclaim submitted as party defendant in which they had admitted the ownership in defendant Betka before they used the 3rd Party description to retract their admission, in the amended crossclaim of 3rd Party defend.

(2) Whether a claim of civil rights violation made in conjunction with action for removal authorized under Title 28-1441 having original fed. question jurisdiction on the basis of having "arisen under " as in 28-1331 and 28-1441 can defeat the removal when in fact the essential elements of rights and immunities created by the constitution of the U.S. where elements in plaintiffs action as held in Jones v. General Tire

and Rubber Co. and defedant appellant as pro se litigant had made the technical mistake to draw the allegations on the violations as authorized by Title 42-1983 and the 14th amendment instead of having them labeled as "state actions" in violations of the 14th amendment on the part of plaintiff&other private citizens with state officials. U.S. v. Price and Lugar v. Edmondson are holding that both allegations are proper for "state actions" in violation of the 14th amendment.

(3) Wheather the Court of Appeal had properly denied appellants Motion made under FRCP 60(b)(6) & 59 with additional evidence of violations by joint tortfeasors including the County of Clackamas and A-T Industries and others who are defendants in AC 82-3474 and who have to be joined or the actions have to be consolidated. The order denying was of Apr 15,83.

(4) The Police of the City of West Linn had given purposeful assistance together with others and the Sheriff of Clackamas County in the seizure of appellants property by right under adverse possession and had participated in the act of plaintiff designed to steal appellants car on or about Oct 20, 1976 and which was sold without having given appellant an opportunity to be heard. The question here is whether the fed. criminal proceeding started with affidavits to U.S. Attorney in Nov. of 82 and Jan of 1983 allows a civil action after the violations of Title 18-2312 and 2313 (Natl Motor Vehicle Theft Act) have been prosecuted. The taking of the car was by trespass and stealth and had been reported to the State Court in Aug of 1980 and to U.S. Magistrate in May of 1981.

GROUNDS FOR JURISDICTION OF SUPREME COURT

This appeal arises from an action of Removal of a civil action from a Circuit Court of the State of Oregon. The order to remand issued in District Court was objected to, and appellant appealed from Order denying Motion to dismiss and Motion to dissolve a temporary injunction and from Order denying appellants Motion to hold opposing atty in contempt of court issued after rehearing was denied. The appeal was dismissed in the Court of appeals disregarding part of appellants Petition for removal which was authorized by Title 28-1441 with orig. fed. question jurisdiction as in 28-1331 and 1441 for removal purposes. Appellant applied for a rehearing which was denied Feb 15, 1983. A timly notice of appeal was filed March 14, 1983 and with date of Feb 19, 1983 appellant filed Motion for Relief from the Feb 15 Order because of fraud and fraud upon the court. The Motion was denied with Order April 15, 1983 and after Amended Notice of Appeal received March 30, 1983 pro se appellant filed 2nd amended Notice of Appeal with date of April 22, 1983 which was received Apr. 25, 1983.

The jurisdiction of this Court is invoked under the provisions of Title 28-1252.

One of the grounds for the jurisdiction of the Supreme Court of the U.S. is that federal criminal statutes as listed create federal tort causes of action which support jurisdiction under Title 28-1331 and is referring to the conspiracy of stealing def. business property,

by plaintiffs in conspiracy with A-T Industries, the City of West Linn, Sheriff of Clackamas County of Oregon and others (who are all defendents in CV AC 82-3474, CA9) who had made no appearance in the Distr. Court for Oregon and who had committed acts constituting violations and offenses against the United States of America as prohibited by Title 18-371 and Title 18-2312 and 2313as part of violations (prohibited by 18-2314&5 Information for affirmative relief had been timly filed with the record of 79-2-71, State of Oregon, County of Clackamas Circuit Court. The offenses of stealing and selling defendants automobile used in his business was done in the period between October 1978 and Sept. of 1981 as part of an actionable tort of Forceable entry and Detainer directed against defendants lawful business on Sept. 18, 1978 in which personal property worth over 4000.-- $ were destroyed and damaged which was insured as part of the business.

Affirmative Relief with regard to civil liability of plaintiff and A-T Industries was entered with 3rd Amended Answer, Counterclaim and Crossclaim with proof in the record in support of defendants affirmative defenses including fraud and the running of the Statute of Limitation. The criminal liability extends to federal court clerks, U.S. Magistrate Jubs and Judge Frye who faliciously denied(defendant in this case) fundamental rights judicially determined as such and embraced by implication within the equal clause amendment of the 14th and 5th amendmt. of the U.S. Constitution, with intend to conceal the federal violations under the statutes listed and presented to the courts in fed. 81-67, 81-3611 SCt 82-5754, fed. 81-866, AC 82-3474 and in this case. In SCt 82-5754 the clerk of this court had denied pro-se litigant (defendant) the

filing of a petition for rehearing authorized under SCt Rule 51 for want of a statement by an attorney required under SCt Rule 28.2 which pr-se litigant understood to be applicable only in cases were litigation is conducted by attorney. The argument that federal rules are to be interpeted in a broad manner was not accepted by clerk.

STATEMENT OF THE CASE

The facts of the case underlying this appeal are the following: Plaintiff bought on contract land from defendant A-T Industries, an investment company, after the Oregon Statute of limitation had run in favour of defendant who had held the involved property under right of adverse possession according to Oregon law. In September and October of 1978 plaintiff raided with force and seized, damaged, destroyed and removed unlawfully personal property located on the real property which was used in defendants lawfully operated business licensed by the City of West Linn and the State of Oregon. The raid had been purposefully assisted by officials of the State of Oregon (West Linn Police and Co. Sheriff). see Bell v. Hood, CA9 and Munro v. Almeida. After having been assured cooperation by defendants attorney, who intended to committ an extrisic fraud against defendant, an exparte Restraining Order was issued without the statutory bond required by Oregon Law ORCP82A (APPENDIX I) and because of the fraud not to defend on the basis of plaintiffs violation of the law actionable as Forceable Entry and detainer and surrendering judicial power in the temporary injunction hearing on Mar 5, 1979 the status quo of the land and ownership rights where decided in favour of plaintiff, inspite of instrument showing that the land had been incoporated by the the County Assessor with adjecent residential lot of defendant since 1966, and all taxes had been paid by defendant. Contrary to Hall v. Jordan the instrument was was accepted by the Court inspite of beeing inadmissable. Defendants attorney continued the case until April 1980. In the meantime defendant had become disabled, was denied by the legal Aid

and was forced to continue as pro se litigant.
After the March 5, 1979 T.I. hearing A-T Industries was entered
and admitted ownership was in defendant in support of their fraudulent
demand for mesne profit. After defendant had taken over his own cause
the status of A-T was changed from defendant to 3rd party defendant
and they retracted their admission in their original pleading.
Defendant objected to the 3rd party status before a Court Order allowing
the taking of Depositions from plaintiff and joint tortfeasors
including former atty of defendant. The objection part of an reply
by defendant Betka to answer and crossclaim of A-T Industries was
denied a hearing. With Answer and affirmative defense defendant
had submitted five affidavits and one statement in support of his
claim for adverse possession and interalia, his claim of lack of
jurisdiction on account of the Statute of Limitation had run.
No hearing was allowed on this of defendants move.
By May 12, 1981 - 2 days before the date of the removal defendant ascertained
for the first time that the action is one which is removable. The transcript
of plaintiff and tortfeasors and interview with one of the helpers
in the Sept 18, 1978 raid, in April of 1981, showed that plaintiff had
usurped police power to maliciously deny help when they were called by def.
on Sept 18, 1978 and instead came to the assistance of plaintiff
in fabricating police reports, not showing that powertools were used
in destroying a building used in defendants business and that plaintiff
had trepassed with civil liability according to the records of the
County Assessors office and that City Ordenance was maliciously
used in removing defendants car on or about Oct 20, 1978 from his

property subject to this action. The transcript of deposition of former (atty of defendant revealed that he had been in touch with the City of West Linn and County of Clackamas without having informed defendant. On or about May 12, 1981, defendant received a court order signed by Judge Blanding, the judge who had ordered and allowed the taking of depositions, the order retracted the order allowing the depositions including depositions from joint tortfeasors and from the entry of the date defendant concluded that the order was part of surrendering of judical power to deny original federal question jurisdiction to defendants cause of defense upon a fraudulantly brought action under State jurisdiction with complaint/plaintiff in which had admitted under oath in transcript delivered on May 4, 1981 that its was false as to content also. Authorities with regard to actions stated above are the following:

Bell v. Hood State officials agreed with plaintiff and A-? they would abridge the constitutional rights and immunities under the 4th and 5th amendment of the U.S. Constitution to be free from depriviation of liberty and property without due process of law and from unreasonable seizures.

Manro v. Almeida For property taken or injured by a criminal act, a criminal remedy in addition to the criminal prosecution, lies to recover the property of damages.

Friske v. Ruder It is alway extrinsic fraud for attorney not to disclose all material facts which prevents full and fair defense

Ziegler v. H.P. Foley Co. Action is removable where plaintiff disguised federal claim

Corsicana National Bank v. Johnson: Right to join tortfeasors

Illinois C.R. Co. v. Sheegog: Fraudulant joinder will not be allowed to prevent removal.

On May 14, 1981 defendant removed the action under Title 28-1441a 1443.

As held in Firestone Tire and Rubber Co. Marlboro Cotten Mills Equitable relief is allowed in fed. Courts for fraud regardless of remedy in State Court. And Zwickler v. Krota is showing that the fed. District Court and Court of Appeals have the duty to decide the federal question and Gibbon v. Brandt is holding that the matter of fraud is included when submitted to the federal question jurisdiction. Defendant has requested under Supreme Court Rule 13 to have the record of the case certified and transmitted to this court and from the record the Court will see that the Distr. Court and Court of Appeals have not taken up the federal question involved. The District Court had denied defendants Motion to dismiss, inter alia for fraud, including Motion to dissolve the temper. Injunction awarded with the help of fraud in the State court. With the order denying the appeal lack of jurisdiction was cited as ground for the dismissal. According to the standard in the 9th Circuit applied to fraud and fraud upon the court defendant had filed after the judgment dismissing the appeal a motion authorized under Fed. Rules of Civ. Procedure, Rule 60(b)(6) which was denied with April 15, 1983 order and is made part of the appeal.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions, as hereinafter described, in that defendant was denied to remove a fraudulantly brought action of trespass to the federal District court under Title 28-1441"arising under" as held in Hall v. Jordan and in which defendant fraudulently was joined for purpose of defeating removal and adding demand for mesne profit. Relief in fed. courts is allowed and remand denied as held in Firestone Tire and Rubber Co. v. Marlboro Cotton Mills regarding the relief and as held in Peter Holding Co. v. La Roy Foods regarding the joining of of a claim of mesne profit to an action for possession of property. And with regard to the relationship between plaintiff and the defendant A-T joined to defeat removal as held in Dailey v. Blicker: Fraudulently stating the action so plaintiff could not recover from the party joined is cause for removal.

The abridgement of defendants rights and immunities as stated including acts of fraud had been assured success by the anticipated surrender of judicial power in the State court and in anticipation that the ordinance 909 of the City of West Linn would not be challenged by defendant who had not attended school in this country and had earned his living up to his disability under Social Security by working with his hands. The ordinance is unconstitutional and void because it is repugnant to the 4th, 5th and 14th amendment to the U.S. Constitution and due process clauses. The ordinance does not provide the safeguard for property part of the following Oreg. Laws:

(1) ORS 483.382(4)(5), (2) ORS 483.384(2), (3) ORS 483.384(1)
The laws are attached under APPENDICES L and City Ordinance 909 under M.

Defendants auomobile part of his lawful business had been unlawfully removed and sold by plaintiff with the help of others and defendant was denied an opportunity for a hearing to determine the propriety of the removal and the acts were in violation of the 14th Amendment to the fed. Constitution. as held in Mays v. Scranton Police 503 F Supp 1255

The personal property used in defendants business, destroyed, damaged and removed by plaintiff was insured as business property(CP 12)DC (AC p 61 of Expt) and the striking of the section of defendants original amended pleading having shown the fact of the insurance was allowed contrary to Oregon law. State Farm the insurer will pay after the ownership issue is settled in the courts. As held in Salysto v. Vol State Life Insurance Co. Tex Civ. App 424 SW 2nd 1,3 futire proceeds of insurance police is property and therefore protected by the Constitution of U.S.

Under the 4th, 5th amendment to the fed. constitution and Title 42-1981 and 42-1982 defendant has right to hold legaly real property without unlawful interference and fraud.

The fraud and surrender of judicial power is obvious by the act of having accepted an instrument which under Act of Congress is prohibited if not properly stamped. Therefore the T.Inj. issued in the State Court was unlawfully obtained and review by this Court is allowed.

Manro v. Almeida provides authority for the recovery of the lost property especially with regard that the property had been lost by acts constituting an interference with defendants lawful business

for which a remedy and relief is allowed as held in McKinzie v. (Huckaby

ABUSE OF DISCRETION

Denial by Court of Appeals of "Motion for Relief from Order of 2-14-1983 authorized by FRCP 60(a) and 60(b)(6) and 59 authorizing additional evidence which dictates consolidation with CA CV 82-374 and to bring in joint tortfeasors by amendment to answer counter-claim to crossclaim by A-T Industries, defendent."

Denial by District Court of Motion to hold opposing attorney in contempt which was made part of the appeal to 9CA with copies under (CR 24 - 32)

ABUSE OR DENIAL OF DUTY ?

Denial of defendants motion under FRAP 10c (including amendment) to District and Appeals Court in which, inter alia, defendant had pointed to the certified transcripts of depositions submitted to District court in support of allegations of fraud, surrendering of judicial power and violations of civil rights and contempt.

CONCLUSION

For the reasons stated above, appellant submits that this appeal brings before the court substential and important fed. questions which require plenary considerations, with brief on the merits and oral argument, for their resolution.

Respectfully submitted,

DATED: May 9, 1983

Rolf Retka, 19886 S. White Cloud Circle, West-Linn, Ore. 97068, Telephone: (503) 657-3669

CASES

Bell v. Hood, 9CA 327 U.S. 678, 90

Corsicana Natl Bank v. Johnson 251 U.S. 68, 64 LEd 141, 218 F 82

Davis v. Operation Amigo 376 F 2nd 101, CA 10 1967

Dailey v. Elicker, 447 F Supp 436

Firestone Tire and Rubber v. Marlboro Cotton Mills, CA 4, SC 202 F 811, cert denied 260 US 749 67 LEd 494, 43 SCt 248

Friske v. Buder 125 F 2nd 841

Gibbon v. Brandt 970 F2nd 385, 336 US 910

Hall v. Jordan, SC Tenn, 15 Wall 393, 21 LEd 72

Ill C.R. Co. v. Sneegog, 215 U.S. 308, 54 LEd 208, 30 SCt 101

Johnes v. Gen. Tire, 1976, CA 7, 541 F2nd 660

Lugar v. Edmondson Oil, Sct No. 80-1730, 1981

Mays v. Scranton Police, 503 F Supp 1255

Manro v. Almeida, 10 Wheat 473, 6 LEd 369

McKinzie v. Huckaby, 112 F Supp 642

Peter Holding Co. v. La Roy Foods, 107 F Supp 56

Salvato v. Vol. State Life Ins. Co., Tex Civ. App. 424 SW 2nd, 1,3

U.S. v. Price 383 U.S. 787, 974, n 7, 1966

Ziegler v. H.P. Foley Co. 468 F Supp 221

Zwicker v. Krota, 1967, 377 U.S. 360, 12 LEd 2nd 444

STATUTES AND OTHER AUTHORITIES

Rules: Set Rule 10, 12, 13 and 15, FRAP 10 e, Oreg. Rules of Civ. Proc. 82A

Fed. Rules of Civ. Procedure: 15b, 12, 20, 52a, 60(b)(6)

Statutes: 18-371, 18-1503, 18-1506, 18-2312, 18-2313, 28-1252
28-1291, 28-1292(a)(1) and Collateral Order Doctrine
28-1441, 28-1447 a,b, 42-1981, 42-1982, 18-241, 18-2.5 U.S.C. A..
National Housing Act, 28-2106, 28-2283, 28-2403(a)(b)

ORS - Oregon Revised Statute 483.382(4)(5), 483.384(2)
483.384(1)

U.S. Constitution
and Ordinance: 4th, 5th and 14th Amendment and West Linn Ord. 909

STATEMENT PURSUANT TO SUPREME COURT RULE 28.4(b)(c) on CONSTITUTIONALITY OF ACT OF CONGRESS AND STATUTE OF STATE OF OREGON

As to defendants knowledge none of the Courts below have certified pursuant to Title 28-2403(a) U.S.C. the Attorney General of the U.S. of the fact that the constitutionality of an Act of Congress (known as U.S.C. 28-1441) was drawn into question. 28-2403(a) U.S.A. may be applicable and this initial pleading shall be served upon the Solicitor General, Dept. of Justice, Washington D.C., 20530. Defendant is alleging in this paper that the Act of Congress providing for the removal of an action to the federal jurisdiction for fraud (including surrender of judicial power) had been violated contrary to the intend of the Act as held in Hall v. Jordan by having accepted in 79-2-71, State of Oregon, Circuit Court for Clackamas County, an instrument having had no proper stamp as part of defendants former attorneys extrinsic fraud upon defendant resulting in the dopriviation of ownership to real property since 1979 and hereby made it impossible under Oregon Law

without financial and mental suffering to have the right of possession returned to defendant before a final decision of ownership in fee simple regarding the involved property.

In this case defendant also brings into question the constitutionality of Ordinance 909, City of West Linn, State of Oregon. Title U.S.C. 28-2403(b) may be applicable and this initial paper shall be served upon the Attorney General of the State of Oregon because the Courts below pursuant to 28-2403(b) have not certified the fact that such Ordinance of a subdivision of the State of Oregon was drawn in question which was apparent of the record in AC-82-3474 in which consolidation with this action had been applied for.

APPENDIX A

Order remanding the action to the State Court and denying Motion to dissolve Temp. Injunction, Date of Order Sept 18, 1981

APPENDIX B

Order denying Defendants motion to dismiss, dated Sept 28, 1981

APPENDIX C

Order denying Motion to hold plaintiffs attorney in contempt and Order denying Motion for reconsideration of order of Appendix A signed by US. Magistrate, dtd Oct 27, 1981

APPENDIX D

Notice of Appeal from Distr. Court dated Oct 28, 1981

APPENDIX E

Order dismissing appeal with date of July 20, 1982

APPENDIX F

Order denying Rehearing with date of Feb 14, 1983

APPENDIX G

JUDGMENT showing Feb date of 1983

APPENDIX H

Order denying Motion for Relief of Feb 19, 1983. Date of Order: Apr. 15, 1983.

APPENDIX I

Notice of Appeal to Supreme Court, filed March 14, 1983

APPENDIX J

Amended Notice of Appeal, received Mar 30, 1983

APPENDIX K

2nd Amended Notice of Appeal, received April 25, 1983

APPENDIX L

Oregon Revied Statutes 483.382 - 483.384(1)(2)

APPENDIX M

Ordinance 909, dtd Feb 12, 1975, City of West Linn, County of Clackamas, State of Oregon

APPENDIX N

Oregon Rules of Civil Procedure 82 A-C

APPENDIX O

Certified letter by Surveyor of Clackamas County, dtd March 7, 1983 supporting last par on page 4. As shown in motion under Appendix H The county is joint-tortfeasor in AC 82-3474 with Sate of Oregon and defendants in 82-3474 in which denial of motion to add party is part ofappeal. Some of the parties to be added are defendants in SCt 82-5754. In 82-3474 motion was made for assuming pendent jurisdiction over state and fed. claim in 79-11-412 Circuit Court Clackamas County, State of Oregon evidenced with Motion denied by order of 4-15-83 APPENDIX H and which is contrary to the pleading in 79-11-412 drawn by co-conspirator(former atty of def.) with plaintiff and A-T Industries in this case.

Endorsed: Filed 9-18
ROBERT M. CHRIST, CLERK
By 26 Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GLEN R. SMITH and DORIS SMITH, Plaintiffs,	)	
v.	)	Civil No. 91-425
ROLF BETKA, Defendant and Third Party Plaintiff,	)	ORDER
v.	)	
A-T INDUSTRIES, INC., an Oregon corporation, Third Party Defendant.	)	

This case involves a dispute as to ownership of land which culminated in the filing of a trespass action in state court. Defendant Betka, acting pro se, removed the case to federal court. Plaintiffs argue the case should be remanded on the grounds that no removal jurisdiction exists and that the petition for removal was not timely filed. I agree with both contentions.

THE THIRTY DAY RULE

28 U.S.C. § 1446(b) requires petitions for removal to be filed within thirty days of defendant's receipt of the initial pleadings. This time limit may not be extended by the court. Perrin v. Walker, 385 F.Supp. 945, 948 (E.D. Ill. 1974). The

35

complaint was filed on February 20, 1979. The petition for removal was not filed until May 14, 1981, more than two years later.

Defendant apparently argues that a federal question was discovered for the first time upon reading transcripts of depositions on May 4, 1981. Even if a federal question was discovered, the record reveals that the depositions were taken on March 31, 1981. Therefore, the cut-off date for the removal petition was thirty days later, on May 1, 1981. The May 14, 1981 filing is clearly outside the prescribed time limit by any calculation.

In addition to being untimely, the petition is technically deficient in that copies of all process, pleadings and orders are not attached as required by 28 U.S.C. § 1446(a).

REMOVAL JURISDICTION

The plaintiffs' complaint in this case constitutes a claim of trespass and clearly alleges no federal question or diversity of citizenship. Therefore, no basis of federal jurisdiction can be found on the face of the plaintiffs' complaint to support removal. Defendant relies however on 28 U.S.C. § 1443 as the basis for removal. Section 1443(1) allows removal where the defendant in state court is deprived of civil rights. This statute, however, is designed to protect specific civil rights stated in terms of racial equality only. Georgia v. Rachel, 384 U.S. 780, 792 (1966). Defendant's claim of unequal treatment due to his German heritage and filing of previous civil rights suits is not enough to support removal under § 1443(1). See Bar Association of Baltimore v. Posner, 391 F.Supp. 76 (D. Md. 1975).

28 U.S.C. § 1443(2) allows removal if the defendant is denied equal rights under the color of authority. This section, however, is available only in those cases where federal offic

36

36

36

or persons assisting them have denied equal rights. Greenwood v. Peacock, 384 U.S. 808, 824 (1966). Here, defendant only alleges improper action by state and local officials. For these reasons 28 U.S.C. § 1443 provides no grounds for removal.

CONCLUSION

For the above reasons, the motion to remand is granted.[1]

MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION

Because the court lacks jurisdiction to hear this case, the motion to dissolve the injunction is denied as moot.

Dated this 18 day of Sept., 1981.

United States Magistrate

[1]The plaintiffs also ask for attorney's fees arguing that defendant's petition for removal was based on bad faith. In light of defendant's pro se status, bad faith is not evident and attorney's fees are denied.

U.S. DISTRICT COURT
DISTRICT OF OREGON
FILED
'83 2; 1
BY DEP.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

GLEN R. SMITH and DORIS SMITH,

Plaintiffs,

v.

ROLF BETKA,

Defendant and Third Party Plaintiff,

v.

A-T INDUSTRIES, INC., an Oregon corporation,

Third Party Defendant.

Civil No. 81-425

OPINION AND ORDER

Patrick A. Butler
6601 SW Terwilliger Blvd.
Portland OR 97219

Attorney for Plaintiffs

Rolf Betka
19886 South White Cloud Circle
West Linn OR 97068

Defendant and Third Party Plaintiff

Joseph W. Glaze
P.O. Box 473
Lake Oswego, Oregon

Attorney for Third Party Defendant

FRYE, Judge

This matter comes before the court on the "motion" of defendant Rolf Betka to dismiss this action on the ground that such action was improperly commenced in the Circuit Court of the State of Oregon for Clackamas County. While this motion is hard

to understand, the court deems it to be, in effect, a memorandum in opposition to plaintiff's Motion to Remand to state court. This appears to be the intent of the defendant from the last sentence of his motion, which states, "Defendant Rolf Betka is herewith moving this court to disallow Gl.R. and D. Smiths motion to remand the case to state court." Magistrate George Juba granted the Motion to Remand on September 18, 1981. Moreover, defendant Betka's ground for his opposition to plaintiff's Motion to Remand is that a state court does not have jurisdiction over a civil rights claim. This contention is in error. A state court does have jurisdiction over a civil rights claim.

IT IS ORDERED that defendant's "motion" is denied.

DATED this 28 day of September, 1981.

Helen J. Frye
United States District Judge

FFI LOM 3-80 5000 9827

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
CIVIL MINUTES — GENERAL

Case No. Civ.81-425 Date Oct.27,1981

Title Smith v. Betka, et al.

DOCKET ENTRY

Record of order denying deft's motion to hold plff's atty in civil contempt. Order denying deft's motion for reconsideration.

PRESENT:

HON. Helen J.Frye, JUDGE

M.DeLap
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

cc: Rolf Betka
19886 S. White Cloud Circle
West Linn, OR 97068

PROCEEDINGS: Patrick Butler
8601 SW Terwilliger Blvd
Portland, OR 97219

Joseph W. Glaze
PO Box 473
Lake Oswego, OR 97045

chambers

13

MINUTES FORM 11

Initials of Deputy Clerk _____

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GLEN R. SMITH, and DORIS SMITH Plaintiffs, v. ROLF BETKA, Defendant, Counterclaimant &Crossclaimant, v. A-T INDUSTRIES, Inc. an Oregon Corporation Plaintiff and Crossclaimant, v. STATE FARM FIRE AND CASUALTY INSURANCE CO., Bloomington Ill. Defendant on Counterclaim.	Civil No. 81-425 NOTICE OF APPEAL

Notice is hereby given that Rolf Betka, defendant above named, hereby appeals to the United States Court of Appeals for the 9th Circuit from the orders of U.S. District Court Judge Helen J. Frye as follows: 1. Denying motion for reconsideration persuant to 28 U.S.C.- 636(b)(1)(A) made within 10 days from order remanding case to state court by U.S. Magistrate, Order entered Oct 27,1981. 2. Denying motion to dismiss, order entered Sept 29,81, 3. Denying motion to adjudge attorney in contempt, order entered Oct 27,1981.

DATED: October 26, 1981

Rolf Betka

ROLF BETKA, In Pro Per, 19886 S. White Cloud Circle, West Linn, Ore. 97068
Tele: (503) 657-3669

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 20 1982

GLEN R. SMITH and DORIS SMITH, Plaintiffs-Appellees vs. ROLF BETKA, Defendant-Appellant	)	No. 81-3613 DC# CV-81-425 HJF Oregon (Portland) ORDER

Before: TANG and REINHARDT, Circuit Judges.

The appeal is dismissed. Appellant's removal petition included no allegations of racial discrimination or other grounds to support adequately removal under 28 U.S.C. § 1443. Therefore we are without jurisdiction to hear this appeal. 28 U.S.C. § 1447(d); Johnson v. Mississippi, 421 U.S. 213 (1965). All other pending motions are denied as moot.

MoCal 7/12/82

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 14 1983

PHILLIP B. WINSBERRY
CLERK U.S. COURT OF APPEALS

GLEN R. SMITH and DORIS SMITH, Plaintiffs-Appellees, vs. ROLF BETKA, Defendant-Appellant.	No. 81-3613 DC# CV-81-452 HJF Oregon (Portland) ORDER

Before: TANG and REINHARDT, Circuit Judges

Appellant's petition for rehearing is denied.

MoCal 7/12/82

JUDGMENT

FILED

United States Court of Appeals

FOR THE NINTH CIRCUIT

GLEN R. SMITH and DORIS SMITH,

Plaintiffs-Appellees,

vs.

ROLF BETKA,

Defendant-Appellant.

No. 81-3613

DC CV 81-425 HJF

APPEAL from the United States District Court for the

District of OREGON (Portland

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the appeal is dismissed.

COPY
ATTEST FEB 22 1983
PHILIP B. BURDAKIN
Clerk of Court
by: M. M. Mujica
Deputy Clerk

Filed and entered July 20, 1982

34

FILED
APR 15 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLEN R. SMITH and DORIS SMITH,	No. 81-3613
Plaintiffs-Appellees,	DC# CV-81-425 HJF
vs.	Oregon (Portland)
ROLF BETKA,	ORDER
Defendant-Appellant.	

Before: TANG and REINHARDT, Circuit Judges

Appellant's motion for relief from the court's order of February 14, 1983 is denied.

Appellant is enjoined from filing additional motions in this appeal and the clerk is directed not to accept any new filings herein.

McCal 7/12/82

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLEN R. SMITH, and DORIS SMITH, Plaintiff-Appellees, vs. ROLF BETKA, Defendant-Apellant.	CA No. CV 81-3613 DC# CV-81-452 HJP Oregon (Portland)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Rolf Betka the defendant above named, hereby appeals to the Supreme Court of the United States from the final order denying rehearing of Feb 14, 1983, from order dismissing the appeal entered in this action on July 20, 1982.

This appeal is taken pursuant to Title 28, USC, Sec. 1252, 1253, 1651, 2106, 2283 and 2101(c)and 2103.

DATED: March 11, 1983

R. Betka

ROLF BETKA, In Pro Per
19886 S. White Cloud Circle
West Linn, Ore. 97068
Telephone: (503) 657-3669

FILED
MAR 14 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

AFFIDAVIT OF SERVICE

STATE OF OREGON)
) ss;
County of Clackamas)

I, Rolf Betka, the defendant-appellant in this case, beeing first duly sworn deposes and say:

On March 11, 1983, a true and correct copy of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES was served on the following individuals by depositing same in the United States Mail in Lake Oswego, Ore., enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

P.A. Butler
1332 SW BerthaAve.
Portland, Ore. 97219
— for plaintiffs Smith

Joseph W. Glaze
P.O. Box 473
Lake Oswego, Ore. 97034
— co-defendant and adverse party

Michal R. Gates
19125 Pacific Highway
Robinwood Center
West Linn, Ore. 97068
for State Farm Fire and
Casulty Insurance,
Bloomington, Ill.
— defendant on counterclaim

This affidavit of Service is ande according to Supreme Court Rule 10 and 28 and with the additional following statement:
The co-defendant A-T Industries and defendant on counterclaim were made parties in Notice of Appeal in Distr. Court and 4th amendment to original pleading in District Court. . A-T was defendant in State Court action.

Application to consolidate this action with AC 82-3474 was made with Motion in AC of Jan 31, 1983. Should have read ancillary instead of pendent. The appeal in the 9th Cir. includ[illegible] Motion for Correction of Certificate of Record on Appeal, in which inter alia, State Farm Insurance and A-T were named as parties.

With Motion of March 10, 1983 in AC 82-3474 plaintiff in this action (defendant herein) had moved the 9CA to accept ancillary jurisdiction over this action on the basis that both actions involve a comnen question of law and fact.

Defendant-appellant in this action pursuant to Rule 44, FRAP with date of March 10, 1983 had notified the 9th CA of the unconstitutionality of their practice to allow the removal of causes only in cases of racial discrimination as they have expressed this in their order denying the appeal.

DATED: March 11, 1983

D. Bona

Sworn to before me: March 11, 1983
NOTARY PUBLIC OF OREGON
My commission expires: 12/13/85

Gerald G. Mitchell

RECEIVED
PHILLIP B. WINBERRY
CLERK U.S. COURT OF APPEALS
MAR 30 1983
FILED 4-30
DOCKETED 4-24
DATE INITIAL

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLEN R. SMITH, and DORIS SMITH, et al.
Plaintiff-Appellees, (Defendants in error)

vs.

ROLF BETKA, et al.
Defendant-Appellant. (Plaintiffs in Error)

CA No. CV 81-3613

DC# CV-81-425 HJT (Oregon, Portland)

AMENDED NOTICE OF APPEALS TO THE SUPREME COURT OF THE UNITED STATES

The original Notice of Appeals with Affidavit of Service had been mailed for filing on March 11, 1983 and has not been returned as of this date. Appellant is therefore using the opportunity to repeat his Notice adding as idicated to eliminate any misunderstanding which might have caused the delay in the return.

Notice is hereby given that Rolf Betka the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the final Order dismissing the appeal entered in this action on July 20, 1982 and received by appellant with Order denying his Motion for Rehearing, dtd Feb 14, 1983

This Appeal is taken pursuant to Title 28, USC Sec. 1252, 1253, 1651, 2106, 2283 and 2101(a) and 2103. The appeal is authorized because of the involved statutes on Civ. Rights, Removal of causes, fed. statutes on crimes against U.S. as pointed out in record of the case and reemphasi in paper filed with date of March 9, 1983 in 82-3474 including request to assume ancillary jurisdiction over this action.

The original Notice of Appeals was made after appellants Motion (1) of Feb. 19, 1983 for Relief from Order above of Feb 14, 1983 authorized under FRCP 60(a) and 60(b)(6) and 59 dealing with substantial rights of defendant-appellant, (2) above March 9, 1983 Motion for Consolidation Request to remand mandate and Notice of Unconstituionality, (3) letter to Chief Judge Browning of 3-16-83 with regard to AC 81-3611(part of this and AC 82-3474 claims) which is before the Supreme Court of U.S. under SCt No. 82-5754 and in which the Clerk of the SCt had denied to appellant the equal application of the Supreme Court Rules for filing documents and (4) after Motion for leave to amend under 15b FRCP was made by appellant in AC 82-3474 on Feb 5, 1983, regarding consolidation with AC-81-3611 denied by this Court at a time AC-82-3474 was in the process of appeal from DC and pro se appellant was seeking relief from deliberate omission in U.S. Magistrates Courtroom aiding the conspiracy under Title 18-241 (reported to U.S. Attorney). (The relief was denied by order of Distr. Court Judge Frye referring and justifying it with the denial of the appeal in AC 81-3611 which was perfected by Order of Aug 20, 1982 approx. 20 days after the order denying relief from deliberate and malicious omission which is part of the Fraud upon the Court as pointed out in Feb 14, 1983 60(b)(6) Motion for Relief above.)

(1) and (2) above were submitted with Unsworn statement authorized under Title 28-1746 and had pointed to "State"exhibits entered in support of proof of the conspiracy and authorized by Oregon law.

DATED: March 28, 1983

ROLF BEHA, In Pro Per
19896 S. White Cloud Circle
West Linn, Ore. 97068
Telephone: (503) 657-3669

AFFIDAVIT OF SERVICE

STATE OF OREGON)
) ss:
County of Clackamas)

I, Rolf Betka, the defendant-appellant in this case, beeing first duly sworn deposes and says:

On March 28, 1983, a true and correct copy of the foregoing Notice of Appeal(Amended) to the Supreme Court of the United States was served on the following individuals by depositing same in the United States Mail in Lake Oswego, Ore. enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

P.A. Butler 1332 SW Bertha Ave. Portland, Ore. 97219	for plaintiff-appellees Smiths
Joseph W. Glaze P.O. Box 473 Lake Oswego, Ore. 97034	defendant(in error) and adverse party
Michael R. Bates 19125 Pacific Highway Robinwood Center West Linn, Ore. 97068 for State Farm Fire and Casulty Insurance, Bloomington, Ill.	defendant on counterclaim and plaintiff in error

This affidavit of Service is made according to Supreme Court Rule 10 and 28 and with the additional following statement:

The co-defendant A-T Industries and defendant on counterclaim were made parties in Notice of Appeals in Distr. Court and 4th amendment to original pleading in Distr. Court. A-T was defendant in State Court actio

Application to consolidate this action with AC 82-3474 was made with Motion of Jan 31, 1983 and should have read "based on ancillary jurisdiction" instead of pendent jurisdiction.

The appeal in the 9th Cir. included Motion for Correction of Certificate of Record on Appeal, in which, inter alia, State Farm Insurance and A-T were named as parties.

With Motion of March 9, 1983 in AC 82-3474 plaintiff (defendant Betka in this action) had moved the 9th Cir. to accept ancillary jurisdiction over this action on the basis that both actions involve common questions of law and fact.

Defendant-appellant in this action pursuant to Rule 44, FRAP with date of March 9, 1983 had notified the 9th Cir. of the unconstitutionality of their practice to allow the removal of causes from State courts only in cases involving racial discrimination as expressed in their order denying the appeal.

DATED: March 28, 1983

Sworn to before me: March

NOTARY PUBLIC OF OREGON
My Commission expires:

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLEN R. SMITH, and DORIS SMITH,
Plaintiff-Appellees,
(Defendants in error)

vs.

ROLF BETKA,
Defendant-Appellant
(Plaintiff in error)

vs.

A-T INDUSTRIES, Inc. an Oregon Corp.
Defendant/Plaintiff
Decision of Party
denied by fed. courts

vs.

STATE FARM FIRE AND CASUALTY INS. CO., Bloomington, Ill. doing business in Oregon
Defendant on Counter-claim

Ct. No. CV 81-3613

DC# CV 81-[illegible] HUF
(Oregon, Portland)

RECEIVED
PHILLIP B. WINBERRY
CLERK U.S. COURT OF APPEALS
APR 25 1983
FILED 4-25
DOCKETED 4-26
DATE INITIAL

2nd AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Rolf Betka the defendant above named, hereby appeals to the Supreme Court of the United States from the order denying rehearing of Feb. 14, 1983, from the final order dismissing the appeal entered in this action on July 20, 1982 denying jurisdiction and from and including order denying Relief, dtd Apr (15, 198
applied for under Fed. Rules of Civ. Proced., rule 60(b)(6) (dealing with fraud upon the court) with date of Feb 19, 1983.

The first Notice of Appeal was filed in the Court of Appeals with date of March 11, 1983.

This appeal is taken pursuant to Title 28, USC, Sec. 1252, with option allowed under 28-1651 and additional authorities of 28-2101(a), 28-2103 and 28-2106, and 28-2283, and 28-2403(a).

NOTICE OF UNCONSTITUTIONALITY OF AN ACT OF CONGRESS (Title 28-1441) was filed with Court of Appeals regarding this action in AC 82-3474 with 2nd motion for consolidation with this action AC 81-3613 before the proceedings in this action were terminated in the Court of Appeals with order of Feb 14, 1983 denying the rehearing.

DATED: April 22, 1983

ROLF HELFER, In Pro Per
19886 S. White Cloud Circle
West Linn, Ore. 97068
Telephone: (503) 657-3669

AFFIDAVIT OF SERVICE

STATE OF OREGON)
) ss;
County of Clackamas)

(CA No. CV 81-3613
DC# CV 81-425 MC
Oregon, Portland)

I, Rolf Betka, the defendant-appellant in this case, beeing first duly sworn deposes and says:

On April 22, 1983, a true and correct copy of the foregoing 2nd (AMENDED) NOTICE OF APPEALS TO THE SUPREME COURT OF THE UNITED STATES was served on the following individuals by depositing same in the United States Mail in Lake Oswego, Ore., enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

Parties in this action:

P.A. Butler
1332 SW Bertha St.
Portland, Ore. 97219
for Glen R. & D. Smith

Joseph W. Glaze
P.O. Box 473
Lake Oswego, Ore. 97034
for A-T Industries

Michal R. Gates
19115 Pacific Highway
Robinwood Center
West Linn, Ore. 97068
agent for State Farm
Fire and Casulty Ins.

Defendant Vote and Bullock of 82-3474 had made no appearnace

Parties in AC 82-2171
Served with Motion for Relief under (FRCP 60(?)

William Davis, J. Mill
One SW Columbia
Portland, Ore. 97258 for Schenker & (Combs

Ronald E. Bailey,
S. Joel Wilson, J.A. Geary
1000 Willamette Center
121 SW Salmon St.
Portland, Ore. 9720[illegible]
for City of West Linn and its defendants employees

Keith Kinsman
Asst County Counsel
906 Main St.
Oregon City, Ore. 97045
Counsel for defendant Sheriff, and Sheriff's deputy of Clackamas County, State of Oregon

All parties required to be served have been served. This affidavit of service is made according to Supreme Court Rule 10 and 28 and with the additional following statement:

The co-defendant A-T Industries and defendant on counterclaim State Farm Ins. were made parties and named in Notice of Appeal to Court of Appeal and 4th Amendment to original pleading by defendant Betka allowed by Distr. Court. A-T was defendant in the State Court action after plaintiff in conspiracy had obtained a Temp. Injunction against defendant Betkas property, recognized by A-T as such in original pleading which was changed in violation to Oregon law to deny defendant Betka fed. jurisdiction under 28-1441 which was declared by defendant Betka unconstitutionally as applied by the involved fed. courts.
I was not informed that the court of appeals informed the Attorney General of the U.S. of the matter. Criminal proceedings have been started inter alia, against fed. court clerks with information to Director of the office of administration of U.S. Courts, the FBI, U.S. Attorney and Asst Attorney General of the U.S., Civil Rights Div.
The FRCP 60(b)(6) Motion denied with order by AC of Apr 15, 1983 was made for the purpose of demanding relief from fraud upon the court which had caused the dismissal of the appeal with denial of jurisdiction, and is linked to SCt 82-5754 in which the clerk of the Supreme Court had denied me the eual application of the Rules of the Supreme Court. Because of the broad interpetation of fraud and fraud upon the 9th Cir. C I had pointed to the County of Clackamas, State of Oregon which had been named in fed 81-67, AC 81-3611, SCt 82-5754 by the action of its administr as co-conspirator with 81-67 defendant H. Clyman and AC 82-3474 defendant Schermer and others who had denied to me the duty of an attorney to join the State of Oregon in 79-11-412, Cir. Court, Clackamas County, State of Oregon which had conspired with the County to deny me a vested right

. . .

in property incl. damages, protected by the 5th Amendment to U.S. Constitution and laws of U.S. and National Housing Act, and constituted a violation of U.S. Statutues as listed in brief submitted to 9th Cir. Court of Appeals under 82-3474. I had applied for fed. jurisdiction in Court of appeals to join 79-11-412 with 82-3474 which was denied inspite of having shown in DC that the violations of the county was linked to def. Schermer in 82-3474 and his joint action with plaintiff Smith and his attorney in this action as shown by Exhibit "A" and "B" part of the 60(b)(6) Motion and by Exhibit "C" and "D" evidence of conspiracy between the county and State of Oregon as pleaded in (CR 59) Amended complaint in 82-3474 (restricted to violations by Clackamas County Sheriff including conspiracy against me with help of county attorney Kinsman.

DATED: April 22, 1983

Rolf Betka

Rolf Betka

Sworn to before me: April 22, 1983

NOTARY PUBLIC OF OREGON
My commission expires:

Mary A Jansen

My Commission Expires 4 1986

483.396 or that more quickly accomplishes the procedures established under ORS 483.351, 483.353 and 483.382 to 483.396. [1981 c.861 §22]

483.362 [Formerly 483.320; 1971 c.76 §1; 1971 c.607 §3; repealed by 1975 c.451 §291]

483.364 [Formerly 483.322; repealed by 1975 c.451 §291]

483.365 Application of ORS 483.355 and 483.357 to vehicle held in criminal investigation. ORS 483.355 and 483.357 do not apply to vehicles being held as part of any criminal investigation by any police agency. [1981 c.861 §21]

483.366 [Formerly 483.324; repealed by 1975 c.451 §291]

483.380 [1967 c.484 §8; 1977 c.882 §14; 1981 c.861 §6; renumbered 483.351]

483.382 Taking abandoned or disabled vehicle into custody. (1) An appropriate authority may take a vehicle into custody and remove the vehicle if the appropriate authority has reason to believe a vehicle is disabled or abandoned and the vehicle has been parked or left standing upon any public way for a period in excess of 24 hours, without authorization by statute or local ordinance.

(2) Vehicles taken into custody under this section shall be held at the expense of the owner or person entitled to possession thereof.

(3) The authority taking custody of a vehicle under this section may utilize its own personnel, equipment and facilities for the removal and preservation of such vehicles, or may hire or otherwise engage other personnel, equipment and facilities for that purpose except as otherwise provided under ORS 483.353.

(4) Notwithstanding the time provisions of subsection (1) of this section, an appropriate authority may immediately take custody of a vehicle that is disabled, abandoned, parked or left standing unattended on a road or highway right of way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway.

(5) At the request of the owner or person in lawful possession of land, an appropriate authority may take a vehicle into custody and remove the vehicle as provided under this section if the vehicle is parked or left standing upon any private property without the express consent of the owner or person in lawful possession or control of the property.

(6) Any action taken under this section is subject to the notice and hearing requirements under ORS 483.355 and 483.357, except when a vehicle is taken into custody and removed from private property at the request of the owner or person in lawful custody of private property under subsection (5) of this section. [1955 c.411 §1; 1965 c.245 §1; 1967 c.484 §1; 1973 c.441 §1; 1979 c.625 §1; 1981 c.861 §7]

483.383 Lien for towing. (1) Any person who, at the request of an appropriate authority, tows an abandoned vehicle, a vehicle taken into custody under the provisions of ORS 483.382 or a vehicle left parked or standing in violation of ORS 487.575 to 487.585 from public property or an abandoned vehicle from private property:

(a) Except as otherwise provided in this section, shall have a lien on the vehicle and its contents in accordance with ORS 87.152 for the just and reasonable charges for the towing service performed and any storage provided;

(b) May retain possession of the vehicle and contents until such charges are paid; and

(c) Shall provide written notice, approved by the appropriate authority, containing information on the procedures necessary to obtain a hearing under ORS 483.357 to each person who seeks to redeem the vehicle.

(2) A lien described under this section does not attach:

(a) To the contents of any vehicle taken from public property until 15 days after taking the vehicle into custody.

(b) To any vehicle that is taken into custody for violation of ORS 487.575 to 487.585. [1969 c.214 §2; 1979 c.625 §2; 1981 c.861 §8]

483.384 Notice to owner; appraisal of value. (1) If a vehicle is removed and held by or at the direction of an appropriate authority, under ORS 483.382, the appropriate authority shall cause the vehicle to be appraised within a reasonable time by a person with a permit issued under ORS 483.396.

(2) The appropriate authority shall provide notice and hearing under ORS 483.355 and 483.357 when a vehicle is taken into custody under ORS 483.382, except when a vehicle is taken into custody and removed from private property at the request of the owner or person in lawful custody of private property under ORS 483.382 (5). [1955 c.411 §2; 1965 c.245 §2; 1967 c.484 §2; 1975 c.296 §1; 1979 c.625 §3; 1981 c.861 §9]

ORDINANCE NO. 909

DINANCE AMENDING ORDINANCE NO. 848 AUTHORIZING THE IMPOUND-
F VEHICLES OR TRAILERS REMAINING ON CITY STREETS FOR A
O OF MORE THAN 72 CONSECUTIVE HOURS, AND REAFFIRMING ALL
NING PROVISIONS OF ORDINANCE NO. 848.

THE CITY OF WEST LINN DOES ORDAIN AS FOLLOWS:

Section 1. Section 47 of Ordinance No. 848 is amended ding thereto subsection 6 which will read as follows:

(6) Whenever a motor vehicle, two wheel trailer, tility trailer, mobile trailer, camper trailer, camper, r recreation vehicle is found to have been parked upon a street within the City for more than 72 consecutive ours, it shall be the responsibility of the police department to make diligent inquiry to determine the ownership of said vehicle or trailer.

(a) If ownership cannot be determined by routine nquiry in the neighborhood where such vehicle or trailer e found, the police department shall examine said vehicle r trailer for its license number, motor number, serial umber, make and style and any other information which ould aid in the identification of the owner of said ehicle or trailer. This information shall be conveyed r purposes of identification to the Department of Motor ehicles of the State of registration of said vehicle or railer, if any.

(b) If the owner of such vehicle or trailer identified, the owner thereof shall be notified by

personal service or certified mail that said vehicle or trailer will be impounded by the police department 24 hours after the receipt by the owner of said notice unless the vehicle is removed by the owner within that period. It shall be presumed that the owner has received notification when a period of seven (7) days expires from the date of mailing of said notice by certified mail. In addition to said notification by personal service or certified mail, notification shall be placed by the police department on said vehicle or trailer.

(c) If ownership of such vehicle or trailer cannot be determined after the accomplishment of the steps set out in subsection (6) (a), the police department shall place upon said vehicle a notice visible to the public stating that said vehicle or trailer shall be removed and impounded by the city after the expiration of 24 hours from the time of posting of said notice unless said vehicle or trailer is removed.

Section 2. All the remaining provisions of Ordinance No. 848 are reaffirmed as contained therein and remain in full force and effect.

Section 3. This ordinance shall take effect on March 1, 1975.

Passed by the Common Council of the City of West Linn this 12th day of February, 1975.

Approved by the Mayor this 12th day of February, 1975.

ATTEST:

Dan Ch.

Wm. K. Bria

SECURITY; BONDS AND UNDERTAKINGS; JUSTIFICATION OF SURETIES RULE 82

A. Security required.

A.(1) Restraining orders; preliminary injunctions.

A.(1)(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(1)(b) No security will be required under this subsection where:

A.(1)(b)(i) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(1)(b)(ii) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A.(2) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(3) Attachment or claim and delivery.

A.(3)(a) Before any property is attached under Rule 84 or taken by the sheriff under Rule 85, the plaintiff must file with the clerk a surety bond, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

A.(3)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond, the court may require the plaintiff to give additional security.

A.(3)(c) No bond shall be required before property is taken by the sheriff under Rule 85 if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(4) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(5) Form of security or bond. Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186.

A.(6) Modification of security requirements by court. The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon an ex parte showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under subsection D.(2) of this rule.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. If there is one individual surety, that surety must be worth

Clackamas County
Surveyor
511 Main St., Rm 206
Oregon City, Ore. 97045

March 6, 1983

Dear Sir,

For purposes of an lawsuit I am in need of maps of the following TaxLots in Clackamas County showing the correct acerages:

D.D. Tompkins D.L.C. No. 61, sec 23, 24, 25 TWP 2 S.R. 1-E
65 30 2 2-E

the map needed is for Taxlot 24-2 showing acerage 3-2 13468-2 Tax Roll
and " " 24 " " 3-2 13468

Very truly Yours,
Rolf Botka
19886 S. White Cloud Circle
West Linn, Ore. 97068
657-3669

This Taxlot system hasn't been used in Clackamas County since 1968. I've called the assessor's office and they no longer have this information

Claim No 61 contains 355.67 acres and Claim 65 contains 25.12 acres according to the government plat of 1861. (This isn't very accurate, however)

Lloyd Robinson
3-7-83

THIS DOCUMENT IS CERTIFIED TO BE A TRUE COPY OF A RECORD ON FILE IN THIS OFFICE

DATED May 2nd 1983

by Lloyd Robinson
Deputy

THOMAS A. MILNE, PLS
CLACKAMAS COUNTY SURVEYOR

END OF DOCKET